

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MCDONALD'S CORPORATION,

Plaintiff,

v.

VANDERBILT ATLANTIC HOLDINGS
LLC,

Defendant.

: **ADDITIONAL STIPULATIONS**
: **REGARDING VANDERBILT'S**
: **PLEADINGS AND ITS BRIEF**
: **BEFORE THE U.S. COURT OF**
: **APPEALS FOR THE SECOND**
: **CIRCUIT**

: No. 1:19-cv-06471-DLI-ST

:

DORA L. IRIZARRY, U.S. District Judge:

Plaintiff McDonald's Corporation ("McDonald's") and Defendant Vanderbilt Atlantic Holdings LLC ("Vanderbilt"), by and through their counsel, hereby agree to supplement the Stipulations of Fact and Law set forth in Section VI the Joint Civil Pretrial Order as follows:

1. In paragraph 98 in the Section titled, "Counterclaim," of its Answer and Counterclaim filed in this action on October 22, 2020 [ECF No. 23], Vanderbilt pled as follows:

In this action, McDonald's seeks to have this Court direct the manner in which the contractually agreed upon appraisal process, used to determine the rent at the premises demised by the lease during the option term, will be set. Because McDonald's, not Vanderbilt Atlantic, has failed to cooperate with the appraisal process set forth in the Option Rent Addendum to the Lease, the Court should declare that the Fair Market Rental Value of the rent for the first five-year option term is \$1,348,000 per year, the Fair Market Rental Value of the rent for the premises determined by Vanderbilt Atlantic's appraiser. Alternatively, the Court should direct that the three appraisers, *i.e.* Mr. Tener, Ms. Locatell, and Marc Nakleh, or a majority of them, estimate the Fair Market Rental Value of the Demised Premises within twenty days of the entry of a final judgement in this action and that if the three appraisers, or a majority of them, cannot agree on the Fair Market Rental Value of the Demised Premises, it shall be determined by adding all three of the appraiser's estimates and dividing the total of all three estimates by the number three.

2. In paragraphs 98 through 100 in the Section titled, “Counterclaim,” of its Answer and Amended Counterclaim filed in this action on December 3, 2020 [ECF No. 28], Vanderbilt pled as follows:

98. In this action, McDonald’s seeks to have this Court — instead of three licensed appraisers in accordance with the contractually agreed mandatory appraisal process — determine the rent at the premises demised by the Lease during the option term.

99. Because McDonald’s, not Vanderbilt Atlantic, has failed to cooperate with the appraisal process set forth in the Option Rent Addendum to the Lease, the Court should declare that the Fair Market Rental Value of the rent for the first five-year option term is \$1,348,000 per year, the Fair Market Rental Value of the rent for the premises determined by Vanderbilt Atlantic’s appraiser.

100. Alternatively, the Court should direct that the three appraisers, *i.e.* Mr. Tener, Ms. Locatell, and Marc Nakleh, or a majority of them, in collaboration with one another, estimate the Fair Market Rental Value of the Demised Premises within twenty days of the entry of a final judgment in this action and that if the three appraisers, or a majority of them, cannot agree on the Fair Market Rental Value of the Demised Premises, it shall be determined by adding all three of the appraiser’s estimates and dividing the total of all three estimates by the number three.

3. In footnote 14 of Vanderbilt’s brief filed with the U.S. Court of Appeals for the Second Circuit on December 23, 2020, appealing the denial of its motion to compel arbitration in this action, Vanderbilt stated: “Appellee’s [McDonald’s] allegation that Appellant [Vanderbilt] (allegedly) read the MDR Clause [the Option Rent Addendum] to require a non-collaborative approach, did not at all factor into the District Court’s Decision Appellant disputes this allegation, but to remove this issue altogether, Appellant hereby waives any claim that the MDR Clause [the Option Rent Addendum] requires a non-collaborative approach, and irrevocably consents to Appellee’s [McDonald’s] interpretation that a collaborative approach should be followed by the three appraisers.”

STIPULATED AND AGREED:

PASHMAN STEIN WALDER HAYDEN, P.C.
Attorneys for Plaintiff McDonald's Corporation

By: /s/ Denise Alvarez
Denise Alvarez
Brendan M. Walsh

Dated: Brooklyn, New York

_____, 2025

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Joshua D. Bernstein
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Kathleen M. Prystowsky
Elizabeth Puccio-Williams

DORA L. IRIZARRY
United States District Judge